

FCC DOCKET CC NO. 97-121

AFFIDAVIT OF ROBERT V. FALCONE AND STEVEN E. TURNER

equal in quality to what the incumbent LEC provides to itself, and on rates, terms and conditions that are just, reasonable and nondiscriminatory.

84. Interconnection is central to facilities-based competition because it establishes how CLECs will exchange traffic with the incumbent LEC. A critical concern here is that SWBT not be allowed to establish discriminatory practices in its dealings with new entrants in the provisioning of interconnection, whether those practices discriminate between the incumbent LEC and CLECs, or between different CLECs. A review of the SGAT and certain of the interconnection agreements reveals that SWBT has imposed discriminatory restrictions in the following three ways:

- the SGAT, Brooks, USLD and ICG agreements each restrict the CLEC's choice of where to interconnect with the incumbent LEC.⁹⁰
- the SGAT, Brooks, USLD, and ICG agreements preclude two-way trunks for interconnection to SWBT's tandems and end offices;⁹¹ and
- the SGAT, Brooks, USLD, and ICG each provide that intraLATA traffic can only be transported to the SWBT access tandem.⁹²

⁹⁰ SGAT, ¶ II.A.1.a.; Brooks/SWBT Agreement, ¶ II.A.1.a.; USLD/SWBT Agreement, ¶ II.A.1.a; ICG/SWBT Agreement, ¶ II.A.1.a..

⁹¹ SGAT, APPENDIX ITR, ¶¶ A.1, B.1; Brooks/SWBT Agreement, Appendix ITR, ¶¶ A.1, B.1; USLD/SWBT Agreement, Appendix ITR ¶¶ A.1, B.1; ICG/SWBT Agreement, Exhibit C - Trunk Group Configuration, ¶¶ A.1, B.1.

⁹² SGAT, APPENDIX ITR, ¶¶ A.1, B.1; Brooks/SWBT Agreement, Appendix ITR, ¶¶ A.1, B.1; USLD/SWBT Agreement, Appendix ITR ¶¶ A.1, B.1; ICG/SWBT Agreement, Exhibit C - Trunk Group Configuration, ¶¶ A.1, B.1.

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Notably, these same restrictions do not exist in the SWBT/Sprint agreement.⁹³ The restrictions thus raise a legitimate concern that SWBT is discriminating among CLECs. These restrictions, coupled with the other SGAT restrictions on UNEs discussed above, make clear that SWBT's claim that the SGAT "meets all the statutory and regulatory requirements associated with the Act's fourteen-point checklist"⁹⁴ is plainly inaccurate. These restrictions also refute the claims of SWBT, made at the time of the submission of the SGAT for approval, that "new competitors may quickly enter into interconnection agreements based on the [SGAT] with the confidence that they are obtaining the most favorable terms and conditions that have been approved by the Commission for other companies."⁹⁵

⁹³ See Sprint/SWBT Agreement, Appendix NIM, Appendix ITR, 2.1.1, 2.1.2.

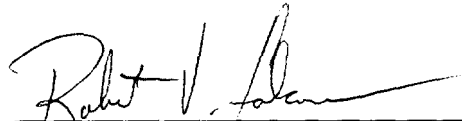
⁹⁴ SWBT Brief In Support at ii; *see, e.g.* Affidavit Of Dale Kaeshoefer On Behalf Of Southwestern Bell Telephone Company ¶ 3.

⁹⁵ Application of Southwestern Bell Telephone Company for Approval of a Statement of Generally Available Terms and Conditions under the Telecommunications Act of 1996, filed in Oklahoma, PUD 970000064. ¶ 5. The statement appears at least to have been technically correct at the time it was made, because the SGAT was submitted for OCC approval on January 15, 1997, while the Sprint agreement was submitted for approval a little over three weeks later, on February 12, 1997.

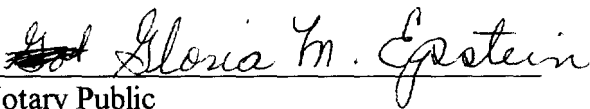
FCC DOCKET NO. 97-121
AFFIDAVIT OF ROBERT V. FALCONE

I declare under penalty of perjury that the foregoing is true and accurate to
the best of my knowledge and belief.

Executed on April 29, 1997.


Robert V. Falcone

SUBSCRIBED AND SWORN TO BEFORE ME this 29th day of
April, 1997.


Notary Public

My Commission Expires:

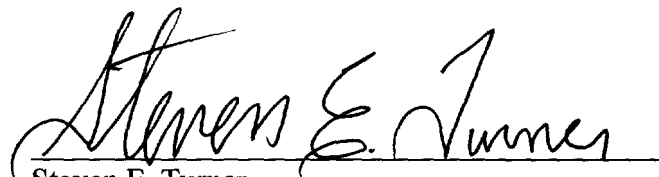
November 10, 2001

GLORIA M. EPSTEIN
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES NOV 10, 2001

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF STEVEN E. TURNER

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

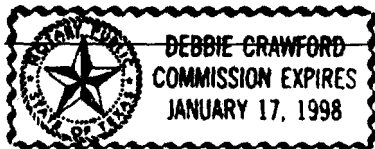
Executed on April 24, 1997.


Steven E. Turner

SUBSCRIBED AND SWORN TO BEFORE ME this 24th day of April 1997.


Notary Public

My Commission Expires:



ATTACHMENT 1

Stephen M. Carter
Vice President-General Manager-
Special Markets

Southwestern Bell Telephone
One Bell Center
Suite 4110
St. Louis, Missouri 63101
Phone 314 235-2110

 Southwestern Bell

April 11, 1997

Mr. Rian Wren
AT&T
Vice President SW States - LSO
5501 LBJ Freeway
Dallas, Texas 78240

Dear Rian:

This responds to your letter dated April 3, 1997, outlining concerns regarding the availability of unbundled network elements (UNEs) from Southwestern Bell (SWBT).

First and foremost, I want to emphasize that SWBT's corporate policy associated with unbundled network elements is, and has consistently been, parity. As we have memorialized in our Texas agreement and as we have offered in Oklahoma negotiations:

Each Network Element provided by SWBT to AT&T will meet applicable regulatory performance standards and *be at least equal in quality and performance* as that which SWBT provides to itself. (emphasis added)

In addition, SWBT is committed to complying fully with the requirements of the Federal Act and FCC rules which provide some clear guidelines for UNEs. In particular, UNEs must be offered in a nondiscriminatory manner to all requesting telecommunications carriers (Rules 51.307 (a) and 51.311 (a)). UNEs must also be offered separate from other UNEs and for a separate charge (Rule 51.307 (d)).

Your letter addresses two general areas relating to the use of UNEs: (1) issues related to when AT&T provides service which is based entirely on the use of SWBT-provided UNEs; and (2) SWBT's terms and conditions associated with its provision of UNEs.

With regard to your first general area, you have identified four specific concerns related to AT&T's intent to use UNEs to arbitrage resold services, i.e., to provide services entirely over SWBT-provided UNEs. Each of these specific concerns appears to stem from AT&T's impressions of internal processes that SWBT has necessarily implemented to meet its legal obligations related to UNEs. SWBT's internal processes are designed to serve all LSPs nondiscriminatorily and thus must similarly apply to all uses of UNEs including requests for individual elements as well as requests for combined multiple elements.

Page 2
 April 11, 1997
 Mr. Rian Wren

Your first concern relates to interruption of an end user's service when converting from a SWBT-provided basic local exchange service to service provided by AT&T based entirely on the use of SWBT-provided UNEs. Let me first assure you that SWBT's policy is never to cause unnecessary service interruptions whether involving retail services or UNEs. Unfortunately, serving arrangements or changes to serving arrangements, from time to time, do necessitate limited service interruption. Whenever such interruption is necessitated, I assure you it will be limited to the least amount of time possible, and certainly to the same degree as when SWBT customers must experience an interruption.

AT&T's second concern relates to the fact that SWBT operations support systems do not currently support Mechanized Loop Testing (MLT) of unbundled elements. You claim that "AT&T will lose the mechanized loop testing capabilities for POTS" when it decides to utilize UNEs to provide service. In reality, AT&T does not "lose" any UNE capabilities but it also of course does not obtain resale service capabilities when it orders UNEs. MLT was designed by AT&T prior to divestiture to test services based on inventory records for services. As such, MLT can only function properly when it has a complete inventory of the facilities used in providing a service. When AT&T purchases UNEs from SWBT, AT&T designs and inventories the components used by AT&T to provide service; SWBT's only obligation is to inventory the individual elements requested from SWBT by AT&T. However, SWBT is willing to consider a request from AT&T to develop this type of testing capability. If AT&T wishes to provide services exactly as SWBT does for its own retail customers (including testing by SWBT via MLT), AT&T has the option of using resale to serve its customers.

Your third concern appears to be an allegation that SWBT is subjecting AT&T to "additional unreasonable non-recurring cost for SMAS test point installation" (although you also include AT&T's end users, SWBT has never suggested that it has, nor does it have, any influence over what AT&T charges its end users). First, there is no charge for the cross connect from a SWBT-provided 2-wire analog loop to a SWBT-provided analog switch port. The rates that you refer to, \$41.07 for the loop and \$78.60 for the switch port, are close to the rates SWBT and AT&T have discussed in Oklahoma negotiations. The nonrecurring charges for a loop connected via a cross connect to a switch port do not include any cost associated with a SMAS test point. You may verify this fact with the numerous AT&T employees that have had frequent access to SWBT proprietary cost information through the cost workshops in the Texas Arbitration case and in other dockets.

Page 3
 April 11, 1997
 Mr. Rian Wren

Your fourth specific concern relates to electronic access to due dates for UNEs. SWBT is committed to providing AT&T and other LSPs unbundled network elements under nondiscriminatory terms as clearly required by the FCC (Rules 51.307 (a) and 51.311 (a)). Therefore, it is not appropriate to provide a different due date process for UNEs connected only to other SWBT UNEs than for UNEs connected or combined with an LSP's own facilities. You suggest incorrectly that SWBT has caused you to "lose the real-time capabilities" of Datagate for ordering unbundled elements. This statement confuses the capabilities that SWBT has offered AT&T through Datagate for resale (i.e., electronic access to due dates) with the capabilities of Datagate associated with UNEs. Although it is true that Datagate will provide different capabilities regarding resold SWBT services as opposed to the purchase of SWBT UNEs, these differences, consistent with the different obligations for resale and UNE, certainly do not cause AT&T to "lose the real-time capabilities of Datagate." SWBT is providing exactly the same due date processes on UNEs to all LSPs, and the same due date processes on resold services to all LSPs.

The second general area addressed in your letter relates to the terms and conditions associated with SWBT's UNEs (which AT&T improperly characterizes as "restrictions"). SWBT views all of these matters as lawful terms and conditions associated with the provision of UNEs and does not agree with AT&T's characterization of these terms as "restrictions." You point to three such terms as supposed "restrictions": (1) SWBT's retention of intraLATA toll (2) SWBT's right to access charges; and (3) SWBT's position that UNEs and tariffed services may not be combined.

In regard to intraLATA toll, I understand that it remains AT&T's position that, in a UNE environment, AT&T is entitled to use unbundled switching to circumvent the intraLATA toll dialing parity requirements of the Act (Section 271(e)(2)(B)). SWBT is entitled to retain intraLATA toll until it implements intraLATA toll dialing parity as a result of actual entry into the in-region, interLATA market or as otherwise provided by the Act. AT&T's position is neither consistent with the Act, nor with any of the arbitration decisions received to date in any of our states.

In regard to access charges, SWBT is entitled to continue to recover our access charges in conjunction with unbundled elements that we provide until access charges are modified by an effective order of the FCC. As you acknowledged, the Eighth Circuit has stayed the FCC's interim access structure. The effect of that stay combined with specific language in the FCC Interconnection Order is that, until the Court rules on the merits, the industry is back to the access regime that existed prior to the FCC's Order and the Court's stay. Nevertheless, as a

Page 4
April 11, 1997
Mr. Rian Wren

compromise, SWBT has offered to forego the imposition of access charges for local switching, CCL and RIC to the IXC for interLATA calls over AT&T. purchased unbundled local switching in exchange for agreement that AT&T will pay an amount equal to the CCL and RIC in addition to the charges for unbundled elements.

Finally, with respect to tariffed services, there is no requirement in either the Act or the FCC rules that AT&T or any other LSP be allowed to combine UNEs with tariffed services and thus our position is certainly not a "restriction" on AT&T's use of or access to UNEs. Our companies have discussed specific circumstances where SWBT is willing to allow AT&T to use tariffed services in conjunction with UNEs, e.g., collocation. But the fact remains that SWBT is committed to provide UNEs in full compliance with the law (i.e., on a fully nondiscriminatory basis) and to provide services in compliance with our tariffs. In any event, SWBT's position does not restrict AT&T's ability to utilize UNEs to provide any telecommunications service, including originating and terminating toll calls from Unbundled Local Switching.

In closing, I hope this letter confirms that SWBT is offering AT&T access to and use of UNEs in full compliance with the Federal law and the FCC rules. None of our positions regarding our provision of UNEs requires AT&T or any other LSP to provide services using SWBT UNEs that (1) experience unnecessary service interruption, (2) are less than equal to services provided to other LSPs including SWBT, or (3) are inconsistent with either the Act or the FCC's rules. SWBT offers AT&T and other LSPs UNEs without restriction, in the sense intended under the law, on nondiscriminatory terms and conditions including prices, which are based on cost consistent with the Act and state arbitration awards.

Sincerely,



ATTACHMENT 2



"The One to Call On".

March 31, 1997

Robert Banneker
Account Manager
Regional Sales

Mr. Carlos de la Fuente
AT&T
5429 LBJ Freeway
Suite 740
Dallas, Texas 75240

Post-it Fax Note	7671	Date	# of pages 2
To: Carlos de la Fuente	From		
Co/Dept	Co.		
Phone #	Phone #		
Fax # 972-968-8022	Fax #		

Dear Carlos:

This is in response to your E-mail of Tuesday, March 25, 1997, regarding UNE test access clarification in Texas. The answers to your questions are as follows:

Q(1a). Will SWBT still be able to test the loop if the UNE elements (loop & switch port) are ordered without test access?

A(1a). SWBT will be able to test but testing will require manual intervention.

Q(1b). If the answer is no, why would an order (UNE elements with loop and switch port combination) ever be placed without test access?

A(1b). The answer to (a) was yes. The ordering of UNE elements, with or without test access, is a business decision AT&T would have to make.

Q(1c). Assuming this scenario exists (UNE loop and switch port) without test access, what is the cost of the loop in this environment?

A (1c). Pricing for UNE elements, with and without test access, is still under negotiation.

Q (2). In a scenario where UNE is ordered (loop and switch port) with test access, what is the definition of "slight"?

A(2). SWB would anticipate an average of 30 minutes or less.

Regional Sales

B-E-64
1010 Pine
St. Louis, Missouri 63101

Phone 314 331-1446
Fax 314 331-9402

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Gurley". The signature is fluid and cursive, with a large loop at the end.

cc: Patty Flores
Randy Gurley
Terry Lindsay
Patty Wagner

Garritson, Debra

From: De la Fuente, Carlos
Sent: Wednesday, April 02, 1997 8:45 AM
To: Garritson, Debra
Cc: Weaver, Marcia
Subject: FW: UNE Test Access Clarification

Debbie,

This is the e-mail I sent to Bob Bannecker (SWBT). The letter from Bob (dated March 31) is in response to this request.

Thanks,
Carlos

From: De la Fuente, Carlos
Sent: Tuesday, March 25, 1997 10:45 AM
To: 'Bannecker, Bob (SWBT)'
Cc: Madole, Gary; Weaver, Marcia; 'Wagner, Patti (SWBT)'
Subject: UNE Test Access Clarification

03/25/97

To : Bob Bannecker
Southwestern Bell Telephone

I want to clarify a couple of issues on your letter to Marcia Weaver dated march 21, 1997:

Your letter stated :

"There will be no interruption of service to the end-user , if AT&T orders UNE elements without test access. A slight disruption of service would be experienced due to the insertion of test points, if AT&T orders UNE elements, with test access."

Please answer the following questions :

1. Since you indicated "no interruption of service when AT&T orders UNE elements without test access" , please answer the following:
 - a. Will SWBT still be able to test the loop if the UNE elements (loop & switch port) are ordered without test access?
 - b. **If the answer is no, why would an order (UNE elements with loop and switch port combination) EVER be placed without test access? SOMEONE, needs to be able to test! Therefore, isn't this scenario NON-EXISTENT and wouldn't we ALWAYS have a service disruption when AT&T ordered loop and switch (combination) UNE elements?**

Note : We understand that we can order a UNE loop without test access when AT&T provides dial tone and we have our own testing capability!
 - c. Assuming this scenario exists (UNE loop & switch port) without test access - **what is the cost of the loop in this environment?** I would assume the cost would be LESS than when we order with test access - is this true?
2. In a scenario where UNE is ordered (loop & switch port) with test access - what is the definition of "slight"?

Please respond by Friday, March 28, 1997.

Thanks,
Carlos de la Fuente
(972) 918-8075

cc: Marcia Weaver (AT&T)
Gary Madole (AT&T)
Patti Wagner (SWBT)

ATTACHMENT 3

Definition of Unbundled Local Switching

Under FCC Rules, the unbundled local switching network element must include all features, functions and capabilities of the switch, including:

- * basic switching connecting lines and trunks §51.319(c)(1)(i)(C)(1),
- * any capability available to incumbent LEC customers, including telephone number, white page listing and dial tone §51.319(c)(1)(i)(C)(1),
- * every feature the switch is capable of providing, including custom calling, CLASS functionality, and Centrex §51.319(c)(1)(i)(C)(2),
- * software-controlled systems which transfer end-users to a new exchange carrier in the same interval as the LEC transfers customers between interexchange carriers¹ §51.319(c)(1)(ii),
- * establishes the unbundled local switching purchaser as the provider of local exchange and exchange access service §51.307(c),² §51.309(a),³ and §51.309(b),⁴
- * use of the incumbent's signaling and call-related data base systems in the same manner at the LEC uses such systems themselves §51.319(e)(1)(ii) and §51.319(c)(2)(iii), and
- * access to the entrant's operator services by dialing "0" or "0 plus" the desired telephone number,⁵ with a similar obligation for access to directory services using the 411 and 555-1212 dialing patterns.⁶

The collective effect of these provisions is to define an unbundled local switching element that establishes the purchaser as its subscribers' local telephone company in every material respect.

¹ A software-controlled transfer would occur where the entrant purchases the preexisting loop/switch combination serving an end-user. In such an instance, it would not be necessary to physically reconfigure the end-user's loop to change its service provider.

² Obligates BellSouth to provide a network element in a manner that permits its purchaser to offer any service made possible by the element.

³ Prohibits BellSouth from imposing any restriction that would limit an entrant's ability to use an element to offer any service the entrant desires.

⁴ Specifies that an entrant may use an element to provide exchange access.

⁵ The FCC's Second Report and Order in Docket 96-98 reaches this finding by concluding:

1. that the "non-discriminatory access to operator services" required by Section 251(b)(3) of the Act means that a customer must be able to reach operator services by dialing "0" or "0 plus" (§ 112 and § 114),
2. that the customer should reach the operator services of the customer's chosen local service provider (§ 116), and
3. that the LEC is obligated to conform the factors within its control to assure that a competing provider's customers can, in fact, access these services (§ 114).

Consequently, when a competing provider offers services using a local switching element obtained from BellSouth, BellSouth must assure that end-users may reach the ULS-purchasers' operator services using the "0" and "0 plus" dialing patterns.

⁶ See Second Report and Order, CC Docket 96-98 (¶ 151), concluding that "... permitting non-discriminatory access to 411 and 555-1212 dialing arrangements is technically feasible, and there is no evidence in the record that these dialing arrangements will cease."



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of

Application by SBC Communications, Inc.)	
For Authorization Under Section 271 of the)	
Communications Act To Provide In-Region)	CC Docket
InterLATA Service in the State of Oklahoma)	No. 97-121

AFFIDAVIT

OF

PHILLIP L. GADDY

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT F

TABLE OF CONTENTS

I.	INTRODUCTION AND QUALIFICATIONS	1
II.	SUBJECT OF AFFIDAVIT	2
III.	SWBT'S RESALE PROVISIONS IMPROPERLY RESTRICT OR LIMIT THE RESALE OF TELECOMMUNICATIONS SERVICES	3
IV.	SWBT'S FAILURE TO MAKE AVAILABLE PROMOTIONS OF NINETY DAYS OR LESS AT THE PROMOTIONAL RATE VIOLATES SECTIONS 251(C)(4) AND 251(B)(1)	7
V.	SWBT'S IMPOSITION OF SERVICE CONNECTION CHARGES VIOLATES THE ACT'S WHOLESALE PRICING REQUIREMENTS	10

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc.)	
For Authorizations Under Section 271)	
of the Communications Act to Provide)	CC Docket
In-Region, InterLATA Service in the)	No. 97-121
State of Oklahoma)	

**AFFIDAVIT OF
PHILLIP L. GADDY ON BEHALF OF AT&T CORP.**

I. INTRODUCTION AND QUALIFICATIONS

1. My name is Phillip L. Gaddy. My business address is 5501 LBJ Freeway, Suite 445, Dallas, Texas. I am currently employed by AT&T in the Government Affairs Organization as Government Affairs Director. My responsibilities include working with State Commissions and industry participants to obtain regulatory conditions that will permit competition in local exchange service in the states of Oklahoma, Arkansas, Kansas, Missouri, and Texas.

2. I received a Bachelor of Sciences Degree from the University of Tulsa in 1975. In 1993, I obtained a Master of Business Administration degree from the University of Texas at Austin and received the George Kosmetsky Award for Outstanding Academic Achievement.

3. My twenty-year career in telecommunications began in 1977, when I joined the Marketing/Sales organization of Southwestern Bell Telephone Company ("SWBT"). In 1979, I transferred to SWBT's Rates and Tariffs organization. In that capacity, I prepared revenue/cost analyses, tariffs and associated documentation in support of SWBT's tariff filings and rate case proceedings. In the fall of 1983, I transferred to the Marketing Plans

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

Implementation ("MPI") group of AT&T Communications, Inc. Although I held various positions within that organization, I dealt primarily with access charge issues, regulatory compliance and the development of competition in telecommunications markets. In 1989, the MPI organization was consolidated into AT&T's Government Affairs organization. In January of 1995, I assumed my current position.

4. As part of my current responsibilities, I have participated in a number of negotiation sessions with SWBT as part of AT&T's effort to achieve a comprehensive and complete interconnection agreement which will allow AT&T to enter the local exchange market in Oklahoma. I have also testified in a number of arbitration proceedings pursuant to Section 252 of the Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996 (the "Act"), on a variety of topics, including SWBT's obligation as an incumbent local exchange carrier ("ILEC") to make all of its retail services available for resale at a wholesale discount.

II. SUBJECT OF AFFIDAVIT

5. Among the checklist item requirements with which SWBT must comply under Section 271 of the Act is the requirement that "[t]elecommunication services are available for resale in accordance with the requirements of section 251(c)(4) and 252(d)(3)." Section 271(c)(2)(B)(xiv). In turn, these provisions require SWBT to provide its telecommunications services for resale at wholesale rates and without imposition of unreasonable or discriminatory conditions or limitations.

6. The purpose of this affidavit is to demonstrate that the resale provisions in SWBT's interconnection agreements and Statement of Generally Available Terms and

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

Conditions ("SGAT")¹ do not comply with the requirements of item (xiv) of the competitive checklist (Section 271(c)(2)(B)(xiv)) in three critical respects. First, SWBT has included in each interconnection agreement and in its SGAT provisions that unreasonably restrict resale in violation of Section 251(c)(4) of the Act and the Commission's Rules. Second, SWBT's refusal to make promotions of ninety (90) days or less available for resale at all -- even at the retail rate -- is an outright prohibition on the resale of a telecommunications service, in violation of Sections 251(c)(4)(B) and 251(b)(1) of the Act. Finally, through its agreements and SGAT, SWBT imposes service connection and other charges that violate the provisions of the Act regarding the prices of services offered at wholesale.

III. SWBT'S RESALE PROVISIONS IMPROPERLY RESTRICT OR LIMIT THE RESALE OF TELECOMMUNICATIONS SERVICES.

7. In the resale provisions of its interconnection agreements and its SGAT, SWBT imposes on the end users of competing local exchange carriers ("CLECs") in blanket fashion all use restrictions and limitations contained in SWBT's tariffs.² Other provisions preclude the aggregation of traffic from multiple end users onto a single service ("the aggregation restrictions") and restrict the resale of Plexar services³ to a single end user or

¹ As shown in AT&T's Comments, SWBT is on Track A and may not rely on its SGAT to demonstrate checklist compliance. However, inasmuch as SWBT claims (albeit incorrectly) that it is entitled to "mix and match," I have addressed the deficiencies in the resale provisions of SWBT's SGAT as well.

² SGAT, Appendix Resale ¶ 2.2; Brooks Fiber Agreement, Appendix Resale ¶ 1; Western Oklahoma Long Distance Agreement ¶ III.A.1; and U.S. Long Distance Agreement, Appendix Resale ¶ 1.

³ Plexar is the service mark pursuant to which SWBT offers a central office-based PBX. In many states this type of service is more commonly known as Centrex service.

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

multiple end users on contiguous properties ("the contiguous property limitation").⁴ These restrictions are inconsistent with the requirements of the Act and the Commission's Rules.

8. Section 251(d)(4)(B) imposes upon ILECs a duty "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of ... telecommunications service...." As explained in the Local Competition Order ("Order"), this prohibition reflects Congress' concern that ILECs might abuse their market power to impose "significant conditions and restrictions" on resale that would impair a CLEC's ability to compete.⁵ Indeed, consistent with Congress' recognition that resale restrictions presented real potential for the exercise of anticompetitive behavior, the Act permits only limited restrictions on the resale of services available to different categories of subscribers, and only where consistent with Commission regulations. Section 251(c)(4)(B).

9. In its Order, the Commission adopted rules and regulations regarding restrictions, conditions and limitations on resale. The Commission determined that ILECs may restrict cross-class reselling of residential services, including the sale of such services to business customers, and may likewise prohibit the sale of Lifeline and other "means tested" service offerings to end-users not eligible for those offerings.⁶ The Commission also held that all other conditions, restrictions and limitations on resale are "presumptively

⁴ SGAT, Appendix Resale ¶¶ 2.3, 2.4; Brooks Agreement, Appendix Resale ¶¶ 2, 3; Western Oklahoma Long Distance Agreement ¶¶ 3.A.2, 3.A.3; and U.S. Long Distance Agreement, Appendix Resale ¶¶ 2, 3.

⁵ Order ¶ 939.

⁶ Order ¶ 962.

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

unreasonable."⁷ This presumption applies to all restrictions and conditions, regardless of the document containing them (e.g., tariffs or agreements),⁸ and the nature of the restriction (implicit or explicit).⁹ The ILEC bears the burden of proof on all proposed restrictions and conditions.¹⁰

10. The interconnection agreements and the SGAT filed by SWBT in Oklahoma violate each of these rules. The SGAT, for example, states that "[f]or services included in this [Resale] Appendix, all use restrictions and limitations and the rules and regulations contained in SWBT's tariffs apply to the [reseller's] end users."¹¹ It further provides that "[e]xcept where otherwise explicitly provided in the corresponding tariffs, [resellers] shall not permit the sharing of a service by multiple end users or the aggregation of traffic from multiple end users onto a single service, except where SWBT permits such sharing by its own end users."¹²

⁷ "Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251(c)(4)." Order ¶ 939. The only other restriction permitted by the Commission relates to short-term promotions, discussed in Section IV, infra.

⁸ Id.

⁹ Id. at ¶¶ 952-53.

¹⁰ 47 C.F.R. § 51.613(b).

¹¹ SGAT, Appendix Resale ¶ 2.2. Similar provisions are contained in SWBT's approved interconnection agreements. See fn. 2, supra.

¹² SGAT, Appendix Resale ¶ 2.4. SWBT's approved interconnection agreements contain similar provisions. See fn. 4, supra.

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

11. The provisions by which SWBT purports to restrict or limit the use of its services are presumptively unreasonable under the Commission's rules. The provisions purporting to restrict the sharing of services by a reseller's end-users, and the aggregation of traffic of multiple end-users, are likewise presumptively unreasonable.¹³ SWBT has not met its burden of proof to demonstrate the reasonableness of any of these provisions in its SGAT, agreements or underlying tariffs. SWBT's adoption of all of these restrictions without proving their reasonableness impermissibly attempts to shift the burden of proof to its competitors, contrary to the Commission's Rules. For this reason, the resale provisions of the SGAT violate Section 251(c)(4)(B) and item (xiv) of the competitive checklist.

12. The Oklahoma commission has approved an arbitration decision upholding SWBT's position that it may apply its anti-aggregation provisions and other restrictions to resellers, but that ruling was based on the arbitrator's mistaken belief that the Act prohibits resellers from offering terms and conditions to end-users different than those offered by the

¹³ The provisions of the SGAT would prohibit CLECs from aggregating traffic for the purpose of offering Shared Tenant Services, for example. Shared Tenant Services is a particularly good illustration of a telecommunications service that should be available for resale with no restrictions. Unlike most other states in SWBT's service territory, Shared Tenant Services are currently not available in Oklahoma. Elimination of the aggregation limitations contained in SWBT's resale provisions for Oklahoma would further competition by allowing, for the first time, competing local service providers to offer customers the lower prices available through Shared Tenant Services. These restrictions are unreasonable and will delay the introduction of real competition into the local service market.